

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
Northeast Nebraska Telephone Company )  
and NebCom, Inc. )  
 ) CC Docket No. 94-129  
Joint Petition for Waiver of the )  
Requirement for Local Exchange )  
Carriers to Verify Inbound Requests )  
of Customers Who Want to Change to )  
an Affiliated Interexchange Carrier )  
  
TO: The Commission

**JOINT PETITION FOR WAIVER**

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October 10, 2003

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## **SUMMARY**

Northeast Nebraska Telephone Company and NebCom, Inc. (collectively, the Northeast Nebraska LECs) request a waiver of the requirement for a local exchange carrier (LEC) to verify inbound carrier change requests when customers seek to switch to the LEC's interexchange carrier (IXC) affiliate. The Northeast Nebraska LECs and their IXC affiliate, CenCom, Inc. (CenCom), do not slam customers and do not act anticompetitively. The Northeast Nebraska LECs show that the verification requirement: (a) imposes new costs on the Northeast Nebraska LECs, CenCom and their customers; and (b) has an anticompetitive effect on CenCom. By comparison, without the verification requirement: (a) customers will not be subject to slamming and the Northeast Nebraska LECs will not act anticompetitively; (b) the Northeast Nebraska LECs will be able to process customers' change requests without there being an extra cost resulting from the new verification requirement; (c) CenCom will be on a par with its competitors vis-à-vis The Northeast Nebraska LECs' processing of inbound carrier change requests; and (d) the Commission's goals of: (i) protecting customers; (ii) encouraging competition in the IXC market and increasing the choices available to consumers - especially in rural areas; and (iii) minimizing regulatory burdens on small carriers, will be realized.

For good cause shown, the Commission should grant a waiver in these special circumstances.

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**JOINT PETITION FOR WAIVER**

Northeast Nebraska Telephone Company and NebCom, Inc.  
(collectively, the Northeast Nebraska LECs), by their attorney,  
and pursuant to Section 1.3 of the Commission's Rules, request a  
waiver of the requirement for a local exchange carrier (LEC) to  
verify inbound carrier change requests when customers seek to  
switch to the LEC's interexchange carrier (IXC) affiliate. This  
requirement appears in paragraph 91 of the Order in the captioned  
proceeding, as modified by the Clarification Order.<sup>1</sup> The

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<sup>1</sup> Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking, FCC 03-42, para. 91 (rel. Mar. 18, 2003) [hereinafter Order], clarified by Order, FCC 03-116 (rel. May 23, 2003) [hereinafter Clarification Order]. The Northeast Nebraska LECs do not request a waiver of the requirement for a LEC to verify an inbound request from a customer that wants to change from one LEC to another LEC.

Northeast Nebraska LECs and their IXC affiliate, CenCom, Inc. (CenCom), do not slam customers. This new verification requirement therefore would impose unwarranted costs on the Northeast Nebraska LECs, CenCom, and their customers. There is good cause to grant a waiver to the Northeast Nebraska LECs in these special circumstances.<sup>2</sup>

## **I. BACKGROUND**

### **A. The Northeast Nebraska LECs and CenCom**

Northeast Nebraska Telephone Company is a small ILEC that has been serving rural areas of Nebraska for decades. NebCom, Inc. is a small ILEC that is a subsidiary of Northeast Nebraska Telephone Company. It was formed to purchase rural exchanges from U S WEST, and thereby improve the service provided to those rural customers.<sup>3</sup> Long distance service is provided by their affiliate, CenCom, which began to provide service in October 2001. CenCom has had some business success, and wants to ensure

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<sup>2</sup> A good argument can be made that the new verification requirement is not in effect because the text of the slamming rules does not require a LEC, as an executing carrier, to verify carrier change requests. This Joint Petition for Waiver, however, is being filed out of an abundance of caution. For the sake of simplicity, this Petition refers to the verification requirement as definitely applying to the Northeast Nebraska LECs.

<sup>3</sup> Northeast Nebraska Telephone Company plans to merge with NebCom on January 1, 2004 - leaving just one ILEC, Northeast Nebraska Telephone Company.

that, at a minimum, it can maintain a consistent penetration level as everyday churn occurs.

**B. Inbound Requests to Change IXCs - Before 2003**

For many years, the Commission's rules did not require LECs to verify carrier changes that result from a customer contacting a LEC directly (aka "inbound carrier change requests"). Such "carrier changes" include customers calling the LEC and asking the LEC to change their IXC. Even in the Second Report and Order released in 1998, the Commission specifically declined to alter its rules in this regard.<sup>4</sup>

Thus, suppose a customer calls a LEC named "LocalTelco." Prior to 2003, LocalTelco could change the customer's IXC without, for example, using third-party verification (TPV) (where the customer may be transferred to an independent party who confirms the change request and verifies the identity of the customer) or a written letter of agency (LOA) (which confirms the change request). This is true regardless of whether the IXC in question is affiliated with LocalTelco. In other words, no verification is required for inbound requests to a LEC from a customer who wants to switch IXCs. That is, the LEC did not need to use an LOA or TPV, for example, to verify the customer's

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<sup>4</sup> See Order para. 91.

request. Then, after the LEC informed the new IXC about the customer's switch, even the IXC did not need to verify the customer's request.

**C. Inbound Requests to Change IXCs - Pursuant to the New Verification Requirement**

In the Order, the Commission modified this requirement. In paragraph 91, the Commission said that it would now "require verification of carrier change requests that occur when a customer initiates a call to a LEC."<sup>5</sup>

Verizon, BellSouth, SBC and Qwest met with Commission staff, and requested the Commission to clarify that the requirement to verify inbound carrier change requests did not apply when, for example, a customer wants to change to an unaffiliated IXC.<sup>6</sup> The Commission agreed, and released the Clarification Order. There, the Commission explained that paragraph 91 of the Order does not apply when a customer wants to change to an IXC that is not affiliated with the LEC.<sup>7</sup>

In other words, suppose LocalTelco has an affiliate that is an IXC. If a customer were to call LocalTelco and ask to switch

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<sup>5</sup> Id.

<sup>6</sup> Ex Parte Letter from Marie Breslin, Verizon, Mary Henze, BellSouth, Mike Alarcon, SBC, and Kathy Krause, Qwest, to Marlene Dortch, FCC, Docket No. 94-129, dated May 2, 2003.

<sup>7</sup> Clarification Order para. 5.



to LocalTelco's IXC affiliate, then pursuant to the Order and the Clarification Order, LocalTelco would need to use one of the Commission's verification procedures, such as an LOA or TPV, to verify that customer's IXC selection. (This requirement was not affected by the Clarification Order.) But if the same customer were to call LocalTelco and ask to switch to an unaffiliated IXC, LocalTelco could make the change without using any Commission-sanctioned verification procedure;<sup>8</sup> the unaffiliated IXC would also not need to perform any verification procedure. The IXC change would happen just as soon as LocalTelco makes the change.

#### **D. Related Proceedings**

The Northeast Nebraska LECs and many other small incumbent local exchange carriers (ILECs) believe that this new verification requirement is unnecessary and anticompetitive, as discussed further below. A group of small ILECs, including the Northeast Nebraska LECs, filed a Petition for Reconsideration requesting the Commission to eliminate the requirement.<sup>9</sup> These

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<sup>8</sup> The Clarification Order confirms that no verification is required in the latter situation. Id.

<sup>9</sup> Rural ILECs Petition for Reconsideration, dated May 19, 2003; Rural ILECs Motion for Leave to File Supplement to Petition for Reconsideration, dated May 30, 2003; Rural ILECs Supplement to Petition for Reconsideration, dated May 30, 2003; Nebraska LECs Reply, dated August 8, 2003 (replying to oppositions and comments on petition).

ILECs also requested the Commission to stay the requirement pending consideration of the Petition for Reconsideration.<sup>10</sup>

Several of the ILECs also have filed Comments on Information Collections demonstrating that the Commission has not fully considered the burden for complying with the verification requirement.<sup>11</sup>

This Joint Petition for Waiver is being filed as an alternative to these other filings. That is, if the Commission were to grant a permanent waiver, the Northeast Nebraska LECs would not need to pursue the Petition for Reconsideration. Conversely, if the Commission were to eliminate the verification requirement, the Northeast Nebraska LECs would not need to pursue this Joint Petition for Waiver.

## **II. THE NORTHEAST NEBRASKA LECs AND CENCOM DO NOT SLAM CUSTOMERS**

The purpose of all of the Commission's slamming rules is to deter slamming. The Northeast Nebraska LECs and CenCom have spotless records in this regard. Simply put: They don't slam

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<sup>10</sup> Rural ILECs Emergency Request for Partial Stay, dated May 22, 2003; Rural ILECs Motion for Leave to File Supplement to Emergency Request for Partial Stay, dated May 30, 2003; Rural ILECs Supplement to Emergency Request for Partial Stay, dated May 30, 2003.

<sup>11</sup> Rural ILECs Comments on Information Collections, dated May 28, 2003; Nebraska ILECs Comments on Information Collections, dated August 1, 2003.

customers -- despite all of the new customers processed by CenCom each year, and all of the IXC change requests that the Northeast Nebraska LECs process each year. Their spotless records are evidenced by:

- \* The enclosed Declaration of Emory Graffis, General Manager of Northeast Nebraska Telephone Company and NebCom, Inc., stating that he has no knowledge of the Northeast Nebraska LECs ever slamming a customer. (Attachment A.)
- \* The enclosed letters from the Nebraska Public Service Commission stating that there are no slamming complaints on file against the Northeast Nebraska LECs and CenCom. (Attachment B.)
- \* The slamming reports filed at the FCC by the Northeast Nebraska LECs and CenCom, which show that the only slamming complaints handled by either of these companies in the past few years involved unauthorized carrier change requests submitted by unaffiliated IXCs.<sup>12</sup>

Also, a search of LEXIS shows that there are no FCC slamming orders involving the Northeast Nebraska LECs or CenCom.<sup>13</sup>

Many factors contribute to these spotless records. CenCom does not use outside telemarketers. By comparison, many slamming complaints received by the FCC

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<sup>12</sup> Some of the slamming reports may have non-zero numbers in "Block 3: Complaints That You Received or Resolved Alleging That You Slammed a Customer." The non-zero numbers in Block 3 refer only to the complaints against unaffiliated carriers, as listed in "Block 4: Complaints That You Received Alleging That Another Carrier Slammed a Customer." In other words, neither of the Nebraska LECs nor CenCom caused any slams referenced in Blocks 3 and 4.

<sup>13</sup> Search of LEXIS, FCC file, Sept. 22, 2003.

result from independent telemarketing operations.<sup>14</sup> In addition, customers of rural ILECs, such as the Northeast Nebraska LECs, receive, and expect to receive, high quality service from local customer service representatives. The Northeast Nebraska LECs' employees live and work in the communities where the LECs provide service. The employees take pride in providing quality service, and strive to demonstrate the utmost in accuracy and integrity as they execute the requests of their neighbors, friends and relatives. Furthermore, the customer service representatives are not penalized for taking their time in responding to the customer's questions and ensuring that the customer obtains the desired telephone services. In short, their small-town culture is manifested in careful customer care.

The Northeast Nebraska LECs' and CenCom's spotless records in processing carrier change requests can be used to predict that they will continue to accurately process IXC change requests in the future. The Commission has often looked to past behavior to predict future actions. For example, when the Commission

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<sup>14</sup> E.g., AT&T v. Winback & Conserve Program, Memorandum Opinion and Order, 16 FCC Rcd. 16,074 (2001) (used independent telemarketers who slammed customers); Talk America, Order, 18 FCC Rcd. 6263 (2003) (used outside telemarketing agent); FCC Imposes \$680,000 Forfeiture Against Vista Services Corporation for Slamming, News Release, File No. EB-99-10, 2000 FCC LEXIS 5604 (rel. Oct. 23, 2000) (used independent contractors for telemarketing).

considered Section 271 applications, the Commission stated that the "'past and present behavior of the [Bell Operating Company] applicant' would be 'highly relevant' because that behavior provides 'the best indicator of whether [the applicant] will carry out the requested authorization in compliance with the requirements of Section 272.'"<sup>15</sup> Additionally, in determining whether to grant broadcast and other wireless licenses, the Commission frequently looks to past performance to predict future behavior.<sup>16</sup> For the same reasons, the Commission can look at the Northeast Nebraska LECs' and CenCom's spotless records in processing carrier change requests, and conclude that the likelihood of their having spotless records in the future is almost a certainty.

In sum, the Northeast Nebraska LECs have shown that the Commission's goal of deterring slamming was realized by those

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<sup>15</sup> Application of BellSouth Corp., BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, Memorandum Opinion and Order, 13 FCC Rcd. 20,599 para. 321 (1998).

<sup>16</sup> See National Black Media Coalition v. FCC, 775 F.2d 342, 347 (D.C. Cir. 1985); Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, Report and Order, 9 FCC Rcd. 6513 (1994) (cellular licensee eligible for renewal expectancy based on substantial service in the past); Amendment of Part 22 of the Commission's Rules Relating to License Renewals in the Domestic Public Cellular Radio Telecommunications Service, Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd. 2834 (1993) ("primary rationale for granting a renewal expectancy is that the licensee's record of past performance is the best available evidence for predicting its future performance").

LECs even before the Commission adopted the new verification requirement. And the Northeast Nebraska LECs' past record can be used to predict that they will not slam customers in the future.

### **III. THE NORTHEAST NEBRASKA LECs AND CENCOM DO NOT ACT ANTICOMPETITIVELY**

While the general purpose of the slamming rules is to deter slamming, the specific purpose of the new verification requirement is to prevent anticompetitive behavior by LECs. According to the Commission, the LECs' affiliates are just beginning to provide interexchange service and allegedly now have incentive to switch customers to the LECs' IXC affiliates.<sup>17</sup> But that is not a concern here. Independent LECs have been permitted to provide interexchange service for a long time, and CenCom has been providing service for two years. In that time, no customer has complained that their long distance service was switched to CenCom without the customer's consent. This fact is supported by:

- \* The Northeast Nebraska LECs' and CenCom's spotless records in processing carrier change requests, as discussed above.
- \* The lack of complaints from competing IXCs. The Northeast Nebraska LECs participated in the Rural ILECs' Petition for Reconsideration which addresses the verification requirement and the Commission's concerns

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<sup>17</sup> Order para. 91.

about LECs acting anticompetitively in the future. AT&T and WorldCom responded to the Petition for Reconsideration. If they had evidence of the Northeast Nebraska LECs acting anticompetitively, AT&T and WorldCom surely would have mentioned it in their responses. But AT&T and WorldCom said nothing on that topic.<sup>18</sup> Their silence is evidence that the Northeast Nebraska LECs have not acted anticompetitively.

The Northeast Nebraska LECs' record of not acting anticompetitively in the past can be used to predict that they will not act anticompetitively in the future, just as their spotless carrier change records can be used to predict that they will not slam customers in the future. Thus, the two key goals of the slamming rules and the verification requirement - to deter slamming and to prevent LECs from acting anticompetitively - have been in the past, and would readily be realized by the Northeast Nebraska LECs in the future, without the imposition of the new verification requirement.

#### **IV. THE VERIFICATION REQUIREMENT IMPOSES UNNECESSARY COSTS**

Before the Commission released the Order, the Northeast Nebraska LECs did not verify inbound carrier change requests using the procedures in the Commission's verification rules for submitting carriers - for two reasons. First, the Northeast Nebraska LECs act as executing carriers when they process IXC

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<sup>18</sup> AT&T Opposition at 4-5, dated July 29, 2003; WorldCom Opposition at 7-9, dated July 29, 2003.

change requests.<sup>19</sup> The Commission's verification rules did not require the Northeast Nebraska LECs, as executing carriers, to verify IXC change requests. Second, the Northeast Nebraska LECs do not have any history of slamming, so additional verification was not necessary.

To comply with the Commission's new verification requirement, the Northeast Nebraska LECs need to use one of the Commission's verification procedures when they process inbound carrier change requests only for changes to CenCom. Thus, when the Northeast Nebraska LECs switch customers to CenCom, they will need to bear a cost that they do not bear when they switch customers to other IXCs.

The Northeast Nebraska LECs' preferred verification method is an LOA. The Northeast Nebraska LECs estimate that they process about 1000 inbound carrier change requests each year, and that the use of LOAs would cost about \$24,000 per year.

The Northeast Nebraska LECs could use the PIC change charge to pass on this cost to their customers. In that case, the PIC change charge would greatly exceed the safe harbor amount of \$5.<sup>20</sup>

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<sup>19</sup> 47 C.F.R. § 64.1100.

<sup>20</sup> See Presubscribed Interexchange Carrier Charges, Order and Notice of Proposed Rulemaking, 17 FCC Rcd. 5568 (2002) [hereinafter PIC Change Charge NPRM].



Instead of requiring customers to pay a higher PIC change charge, CenCom could issue credits to its new customers in the amount of the increased PIC change charge. CenCom then would need to pay an additional \$24,000 per year to obtain new customers. This approach is unacceptable. The IXC affiliates of small LECs typically operate on small profit margins. These small IXCs pay comparatively high per-minute charges to wholesalers due to the IXCs' low call volumes. And the IXCs' administrative costs are likely to be higher per customer because there are fewer customers. CenCom is no exception. The additional cost of compliance with the verification requirement cannot be borne as readily by CenCom as it may readily be borne by much larger IXCs.

The bottom line is that regardless of whether CenCom or the customers bear the costs directly, the verification requirement places a burden on CenCom and its customers - a burden that is not necessary, as demonstrated above.

Of course, the Northeast Nebraska LECs do not have to use LOAs. They could use another verification method, such as TPV. The reality is that most small LEC-affiliated IXCs use LOAs, not TPV - so small LECs, such as the Northeast Nebraska LECs, likely would use LOAs as well. The LOAs permit the IXC, or the LEC, to retain control of the interaction with the customer, thereby

ensuring that no mistakes occur in the carrier change process. And, as shown above, the LOA process has contributed to CenCom's spotless record.

Nevertheless, if the Northeast Nebraska LECs were to use TPV, they would first follow the same procedures that they currently use to ascertain whether the IXC change request is legitimate, and then, they would hand off the call to a TPV service. Thus, the TPV would not replace any of the Northeast Nebraska LECs' current procedures. It would be an extra procedure - one that would be performed solely for changes to their IXC affiliate and solely due to the new verification requirement.

The Northeast Nebraska LECs do not foresee any benefit to using TPV, so they have not fully investigated the cost of using TPV. Nevertheless, the Northeast Nebraska LECs are aware that the Commission has estimated the cost of using TPV to be approximately \$2.625 per customer change.<sup>21</sup> If the Northeast Nebraska LECs were to process 1000 inbound change requests each year for customers who want to switch to CenCom, the total cost could be \$2,625. Because the Northeast Nebraska LECs would have call volumes much lower than that offered by larger IXCs, the

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<sup>21</sup> Supporting Statement, FCC Paperwork Reduction Act Submission to the Office of Management and Budget, OMB Control No. 3060-787, at 19, dated June 11, 2003.

Northeast Nebraska LECs assume that the actual annual cost for TPV could be even higher due to higher per call charges and higher fixed monthly charges for their lower call volumes. No matter what the exact cost may be, TPV would still be an unnecessary cost, just as the LOAs would be an unnecessary cost.

#### **V. THE VERIFICATION REQUIREMENT IS ANTICOMPETITIVE**

In addition to imposing new costs, the verification requirement is anticompetitive in its implementation. Consider the procedure for the Northeast Nebraska LECs to use an LOA to verify inbound requests from customers who want to switch to CenCom. The Northeast Nebraska LECs would need to mail the LOA to the customer; the customer would review it, sign it and mail the LOA back to the Northeast Nebraska LECs; and then the Northeast Nebraska LECs would make the carrier change. Thus, the verification of a carrier change request may not be completed until a week or so after the customer calls the Northeast Nebraska LECs. By comparison, if a customer wanted to switch to an unaffiliated IXC, the change could take place immediately because the Northeast Nebraska LECs would not need to verify the request to switch to that IXC.

This difference in the processing of carrier change requests for the affiliated IXC versus unaffiliated IXCs is highlighted by

the following hypothetical conversations between a customer of the Northeast Nebraska LECs and a customer service representative (CSR).

**SCENARIO 1**

Customer: "Please change my long distance company to  
BIG-IXC."

CSR: "OK. . . . The change will take effect  
within 24 hours."

## SCENARIO 2

Customer: "Please change my long distance company to your long distance affiliate."

CSR: "OK. I would be happy to help you with that. First, I will mail a letter of agency to you. You'll need to review it, sign it, and mail it back to us. After we receive the completed letter of agency, we'll be happy to make the change. So, in about a week, you'll be switched to our long distance affiliate."

Customer: "You've got to be kidding! I want to get rid of my current long distance company right away. Is there any way I can do that?"

CSR: "Unfortunately, if you really want to switch to our long distance affiliate, the regulatory paperwork will take about a week to turn around. But if it's more important that you switch carriers right away, we could switch you to one of the other long distance companies."

Thus, the verification requirement makes it clearly more difficult for a customer to change to CenCom - thereby harming competition.<sup>22</sup> With CenCom being relatively new to the IXC marketplace, now is not the time for CenCom to face unnecessary regulatory barriers to its continued success as an IXC.

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<sup>22</sup> See PIC Change Charge NPRM para. 12 (making carrier changes easy for consumers helps spur competition).

## **VI. THE NORTHEAST NEBRASKA LECs MEET THE COMMISSION'S STANDARDS FOR GRANTING WAIVERS**

Pursuant to Section 1.3 of the Commission's Rules, the Commission can grant a waiver for good cause shown. Here, the Northeast Nebraska LECs have shown that the requirement to verify inbound carrier change requests for changes to its IXC affiliate is not necessary to deter slamming. Yet, verification would impose unnecessary costs, and would present a barrier to CenCom's ability to maintain its current penetration level. Thus, there is good cause to grant a waiver.

A waiver also is supported by the particular facts of this case that make strict compliance inconsistent with the public interest.<sup>23</sup> As shown above, strict compliance with the verification requirement would not only impose unnecessary burdens on the Northeast Nebraska LECs and CenCom, but it would also be a barrier to CenCom's ability to retain its market penetration. Also, the Northeast Nebraska LECs could increase their PIC change charge, but the Commission has previously acknowledged that higher PIC change charges are a barrier to competitive entry and the exercise of customer choice.<sup>24</sup> Thus, a higher PIC change charge is inconsistent with the Commission's

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<sup>23</sup> See Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>24</sup> PIC Change Charge NPRM para. 3.

goals of spurring competition in the IXC market and increasing the choices available to consumers - especially in rural areas.<sup>25</sup> For these reasons, the verification requirement is not in the public interest.

In deciding whether to grant a waiver, the Commission may take into account considerations of hardship and equity.<sup>26</sup> Here, the verification requirement would impose costs on CenCom, a small IXC that cannot bear such burdens as readily as some larger IXCs. Thus, the verification requirement creates a hardship and is inequitable.

In sum, strict compliance with the verification requirement would impose financial burdens, be inequitable and anticompetitive - contrary to the Commission's goals in fostering competition in interexchange service in rural areas. By comparison, without the verification requirement, customers would be well-served by the careful customer service provided by small

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<sup>25</sup> See, e.g., Multi-Association Group(MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Dockets Nos. 98-77 and 98-166, 16 FCC Rcd. 19, 613 para. 6 (2001) (not wanting to discourage long distance competition or limit consumer choice in rural areas); Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, Notice of Proposed Rulemaking, 17 FCC Rcd. 9916 para. 22 (2002).

<sup>26</sup> WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

ILECs and their IXC affiliates. A waiver is appropriate in these circumstances.

#### **VII. A WAIVER IS CONSISTENT WITH COMMISSION PRECEDENT**

The Commission "is committed to continuing the examination of [its] rules and processes to ensure that small telephone companies are provided with appropriate regulatory flexibility."<sup>27</sup> In many instances, the Commission has waived its rules for small companies. For example, the Commission has waived its rules so that small LECs would: (a) not need to implement FLEX ANI because the cost would be burdensome;<sup>28</sup> (b) not need to implement telephone number portability in the 100 largest MSAs until they receive a bona fide request;<sup>29</sup> and (c) have additional time to implement network changes to support

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<sup>27</sup> Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 AND 98-166, 16 FCC Rcd. 19,613, 19,729 (2001) (statement of Chairman Powell).

<sup>28</sup> Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Memorandum Opinion and Order, 13 FCC Rcd. 4998 (Com. Car. Bur. 1998).

<sup>29</sup> Telephone Number Portability, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd. 7236 (1997).



four-digit carrier identification codes.<sup>30</sup> Grant of a waiver here would be consistent with this "longstanding sensitivity to the concerns of small companies."<sup>31</sup>

Grant of a waiver also is supported by previous Commission decisions granting waivers of rules that were unnecessary and costly. For example, the Commission has often granted waivers of the price cap all-or-nothing rule, so that small LECs acquiring additional exchanges could remain subject to rate-of-return regulation. In those situations, the Commission determined that the goal of the all-or-nothing rule (e.g., to prevent improper cost-shifting among affiliates) would be achieved without the imposition of the rule, whereas the imposition of the all-or-nothing rule would impose unnecessary costs on the small LECs.<sup>32</sup> As another example, the Commission granted waivers of its rules

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<sup>30</sup> See Administration of the North American Numbering Plan Carrier Identification Codes (CICs), Declaratory Ruling, 13 FCC Rcd. 8687 (Com. Car. Bur. 1998).

<sup>31</sup> National Exchange Carrier Association, et al., Joint Petition for Waiver of Sections 36.611(a), 36.631(c) and 36.641(b)(3) of the Commission's Rules, Order, 5 FCC Rcd. 173 para. 21 (Com. Car. Bur. 1989).

<sup>32</sup> E.g., Nemont Telephone Cooperative, Inc., Order, 18 FCC Rcd. 838 (Wireline Comp. Bur. 2003) (granting a waiver of the all-or-nothing rule because the problems it was meant to prevent did not exist, and imposition of the rule would impose regulations that were not suitable for a small LEC); see also All West Communications, Inc., Carbon/Emery Telecom, Inc., Central Utah Telephone, Inc., Hanksville Telecom, Inc., Manti Telephone Company, Skyline Telecom, UBET Telecom, Inc. and Qwest Corp., Order, 16 FCC Rcd. 4697 (Com. Car. Bur. 2001).

concerning the minimum payloads for transmitters. In those situations, the purpose of the rule (i.e., to minimize frequency congestion) would be realized by the affected small LECs without application of the rule, because there was no prospect of congestion. By comparison, the strict application of the rule would increase the cost of providing service in a remote area.<sup>33</sup> Similarly, in the case at hand, the goal of the slamming rules (i.e., to deter slamming) will be met without the imposition of the new verification requirement, whereas the application of the rule would impose unnecessary costs on the Northeast Nebraska LECs, their affiliated IXC and their customers. Just as the Commission waived the price cap rule and the transmitter payload rule for other carriers, the Commission should grant a waiver here.

#### **VIII. A WAIVER IS CONSISTENT WITH THE ACT**

Furthermore, nothing in the Communications Act of 1934, as amended (the Act), would prohibit the grant of a waiver. Section 258 of the Act states that carriers must comply with the subscriber change verification procedures prescribed by the Commission. The statute does not state that LECs must verify

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<sup>33</sup> E.g., Wilderness Valley Telephone Co., Order, 15 FCC Rcd. 11,751 (Wireless Tel. Bur. 2000).

inbound IXC change requests. Indeed, the Commission recently affirmed that LECs do not need to verify inbound carrier change requests for unaffiliated IXCs.<sup>34</sup> Thus, the Act must not require verification of inbound carrier change requests for unaffiliated IXCs. And there surely is no mention in the Act of whether the carriers involved are affiliated or unaffiliated. Thus, just as the Act does not require verification for changes to unaffiliated IXCs, it does not require verification for changes to affiliated IXCs.

A waiver would simply modify the Commission-prescribed procedures for the Northeast Nebraska LECs, and would therefore be consistent with the Act. As stated by the D.C. Circuit, "sound administrative procedure contemplates waivers. . . . [W]ith diligent effort and attention to essentials[, ] administrative agencies may maintain the fundamentals of principled regulation without sacrifice of administrative flexibility and feasibility."<sup>35</sup> Here, customers would remain free from slamming while the Commission uses its administrative flexibility to refrain from imposing unnecessary regulations. And even if the Northeast Nebraska LECs were to slam a customer,

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<sup>34</sup> Clarification Order para. 5.

<sup>35</sup> WAIT Radio, 418 F.2d at 1159.

they would still be required to provide just compensation in accordance with the slamming rules.

The Commission has granted many waivers of the slamming rules, as requested by Bell Companies and other LECs. In those orders, the Commission has specifically noted the terms of Section 258 of the Act, and has explained the Commission's ability to waive its rules, consistent with the Act.<sup>36</sup> There is nothing in the Act that would permit the Commission to grant these waivers to the Bell Companies but prohibit the Commission from granting the waiver requested here. Thus, just as the Commission has waived its slamming rules for other LECs, the Commission may grant a waiver here, consistent with the Act.

#### **IX. THE WAIVER SHOULD BE PERMANENT**

The Northeast Nebraska LECs request the Commission to grant the waiver on a permanent basis. Without a waiver, the verification requirement would continue to present unnecessary, inequitable and anticompetitive costs for the foreseeable future. The Northeast Nebraska LECs do not expect any changes to their

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<sup>36</sup> E.g., 2000 Biennial Review - Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, Order, DA 03-2745 (Consumer & Govt. Aff. Bur. rel Aug. 27, 2003); Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Order, 16 FCC Rcd. 3646 (Com. Car. Bur. 2001).

service areas, and CenCom does not expect any changes to its penetration level, that would warrant the termination of a waiver anytime in the future.

The Northeast Nebraska LECs are aware that the Commission has required periodic reporting as a condition of granting waivers in other situations. But there would be no need to require the Northeast Nebraska LECs to file periodic reports in this case. If, perchance, a customer were slammed by either LEC, the customer readily could file a complaint with the Nebraska Public Service Commission or, perhaps, the FCC. Thus, there is a built-in mechanism for regulatory agencies to monitor the Northeast Nebraska LECs' carrier change activities.

Nevertheless, as a condition for the grant of a permanent waiver, the Northeast Nebraska LECs suggest that they could retain records of customers complaining about slamming (even if such complaints were against unaffiliated IXCs). These records would be made available to the Commission upon request. This requirement would be similar to that imposed in other situations where carriers must retain records and make them available upon request.<sup>37</sup>

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<sup>37</sup> See, e.g., Implementation of the Telecommunications Act of 1996, Third Report and Order in CC Docket No. 96-115, Second Order on Reconsideration of the Second Report and Order in CC Docket No. 96-98, and Notice of Proposed Rulemaking in CC Docket No. 99-273, 14 FCC Rcd. 15,550 (1998) (upon request by the

## **X. CONCLUSION**

The Northeast Nebraska LECs have shown the following:

1. The Northeast Nebraska LECs are small ILECs that, collectively, have been serving rural areas of Nebraska for decades.
2. The Northeast Nebraska LECs's IXC affiliate, CenCom, has been providing interexchange service for more than two years.
3. Their small-town culture and values is exhibited in their careful handling of customers requests.
4. CenCom does not use independent telemarketers.
5. Neither the Northeast Nebraska LECs nor CenCom has slammed any customers.
6. The Northeast Nebraska LECs have not acted anticompetitively in processing inbound carrier change requests.
7. The Northeast Nebraska LECs's preferred verification method is the letter of agency, just as CenCom uses letters of agency.
8. The verification requirement:
  - a. Imposes new costs on the Northeast Nebraska LECs, CenCom and their customers.
  - b. Has an anticompetitive effect on CenCom.
9. The Northeast Nebraska LECs' and CenCom's spotless records can be used to predict that the likelihood of

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Commission, carriers must provide copies of contracts for subscriber list information); Aircell, Inc., Order, 14 FCC Rcd. 806 (Wireless Tel. Bur. 1998) ("Cellular licensees providing cellular service to airborne terminals must promptly provide upon request by the Commission any information relating to any complaint of interference.").

their accurately processing carrier change requests in the future is almost a certainty.

10. Without the verification requirement:

- a. Customers will not be subject to slamming and the Northeast Nebraska LECs will not act anticompetitively.
- b. The Northeast Nebraska LECs will be able to process customers' change requests without there being an extra cost resulting from the new verification requirement.
- c. CenCom will be on a par with its competitors vis-à-vis The Northeast Nebraska LECs' processing of inbound carrier change requests.
- d. The Commission's goals of: (i) protecting customers; (ii) encouraging competition in the IXC market and increasing the choices available to consumers - especially in rural areas; and (iii) minimizing regulatory burdens on small carriers, will be realized.

For good cause shown, the Northeast Nebraska LECs request the Commission to grant a permanent waiver of the requirement to verify inbound carrier change requests where customers want to switch to the Northeast Nebraska LECs' IXC affiliate.

Respectfully submitted,  
**NORTHEAST NEBRASKA TELEPHONE COMPANY AND  
NEBCOM, INC.**



By

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Their Attorney

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P.O. Box 86089  
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October 10, 2003



## ATTACHMENT A

### DECLARATION

I, Emory Graffis, am the General Manager of Northeast Nebraska Telephone Company and NebCom, Inc. Based on my experience and my review of the records of Northeast Nebraska Telephone Company, NebCom, Inc. and CenCom, Inc., I am not aware of Northeast Nebraska Telephone Company, NebCom, Inc. and CenCom, Inc. ever slamming a customer, or of being accused of acting anticompetitively when processing a carrier change request. In any cases where Northeast Nebraska Telephone Company or NebCom, Inc. may have been named in slamming complaints, unaffiliated interexchange carriers had submitted unauthorized carrier change requests which Northeast Nebraska Telephone Company or NebCom, Inc. effected as an executing carrier.

Signature Emory Graffis Date 10-10-03

## ATTACHMENT B

Letters from the Nebraska Public Service Commission

# Nebraska Public Service Commission

COMMISSIONERS:  
ANNE C. BOYLE  
LOWELL C. JOHNSON  
ROD JOHNSON  
FRANK E. LANDIS  
GERALD L. VAP

EXECUTIVE DIRECTOR:  
ANDY S. POLLOCK



300 The Atrium, 1200 N Street, Lincoln, NE 68508  
Post Office Box 94827, Lincoln, NE 68509-4827  
Website: [www.psc.state.ne.us](http://www.psc.state.ne.us)  
Phone: (402) 471-3101  
Fax: (402) 471-0384

NEBRASKA CONSUMER HOTLINE:  
1-800-526-0017

September 10, 2003

To Whom it May Concern:

This is to serve as verification that Northeast Nebraska Telephone Company, a rural local exchange carrier, has no slamming complaints on file with the Nebraska Public Service Commission.

Sincerely,

A handwritten signature in cursive script that reads "Cheryl Elton".

Cheryl Elton  
Consumer Advocate

# Nebraska Public Service Commission

COMMISSIONERS:  
ANNE C. BOYLE  
LOWELL C. JOHNSON  
ROD JOHNSON  
FRANK E. LANDIS  
GERALD L. VAP

EXECUTIVE DIRECTOR:  
ANDY S. POLLOCK



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Phone: (402) 471-3101  
Fax: (402) 471-0354

NEBRASKA CONSUMER HOTLINE:  
1-800-525-0017

September 10, 2003

To Whom it May Concern:

This is to serve as verification that NebCom, a rural local exchange carrier, has no slamming complaints on file with the Nebraska Public Service Commission.

Sincerely,

A handwritten signature in cursive script that reads "Cheryl Elton".

Cheryl Elton  
Consumer Advocate

# Nebraska Public Service Commission

COMMISSIONERS:  
ANNE C. BOYLE  
LOWELL C. JOHNSON  
ROD JOHNSON  
FRANK E. LANDIS  
GERALD L. VAP

EXECUTIVE DIRECTOR:  
ANDY S. POLLOCK



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Phone: (402) 471-3101  
Fax: (402) 471-0254

NEBRASKA CONSUMER HOTLINE:  
1-800-526-0017

September 30, 2003

To Whom it May Concern:

This is to serve as verification that Cencom dba: NNTC Long Distance Company, has no slamming complaints on file with the Nebraska Public Service Commission.

Sincerely,

A handwritten signature in cursive script that reads "Cheryl Elton".

Cheryl Elton  
Consumer Advocate